



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO-T-2022-0005]

#### Trademarks USPTO.gov Account ID Verification Program

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** In late 2019, as part of the United States Patent and Trademark Office's (USPTO or Office) continuing efforts to protect the integrity of the U.S. trademark register, and to better protect its customers from scams and fraudulent activities related to the trademark register, the USPTO began requiring customers to create a USPTO.gov account to file electronic trademark forms. This enabled the Agency to monitor trademark filing behavior and aided in enforcing the existing USPTO Rules of Practice regarding submissions in trademark matters. On January 8, 2022, in anticipation of moving toward a mandatory identity (ID) verification process to further thwart fraud, the USPTO made ID verification available to USPTO.gov account holders on a voluntary basis. This allowed account holders to verify their identity in either paper or electronic form before ID verification became mandatory. On August 6, 2022, the USPTO will make it mandatory for existing and new account holders who occupy an appropriate user role to verify their identity as a condition for filing electronic trademark forms.

**FOR FURTHER INFORMATION CONTACT:** Robert Lavache, Office of the Deputy Commissioner for Trademark Examination Policy, at 571-272-5881. You can also send inquiries to [TMFRNotices@uspto.gov](mailto:TMFRNotices@uspto.gov).

**SUPPLEMENTARY INFORMATION:** Historically, trademark customers of the USPTO have only had to attest to the information in their applications and other submissions if the USPTO questioned the information. Thus, for example, if a third party had evidence that the identity of an applicant or registrant was false, that party would have to oppose the application or petition to

cancel the registration before the USPTO's Trademark Trial and Appeal Board, a costly and time-consuming process.

In recent years, however, the Office has received an increasing number of trademark submissions containing false information, resulting in some bad actors obtaining trademark registrations to which they were not entitled. In some cases, these actors have filed tens of thousands of applications containing improper submissions that include false signatures, false addresses, false claims of use required to obtain and maintain a registration, and false or hijacked U.S. attorney credentials. They have also engaged in unauthorized practice of law and unauthorized representation of others before the USPTO. In other cases, bad actors have used the system to improperly file unauthorized submissions in a competitor's application and registration records. While the levels of misconduct and improper submissions are relatively low compared to the large annual volume of filings in trademark cases, the impact of these activities has become disproportionately significant, as evidenced by the growing number of internet-based scams that have been sanctioned and that have implicated thousands of applications featuring rule violations that the USPTO terminated. Additionally, these activities violate the USPTO rules of practice—including rules on signatures, certifications, and representation of others before the USPTO—and website terms of use, potentially calling into question the validity of any resulting registration.

In response, the USPTO has implemented measures, including a trademark administrative sanctions process that investigates suspicious applications and imposes sanctions on rule violators. *See Trademarks Administrative Sanctions Process*, 87 FR 431 (Jan. 5, 2022). The USPTO has also required those filing documents in trademark matters to have a USPTO.gov account. Moving forward, in an attempt to prevent the filing of applications and other submissions that are fraudulent or violate the USPTO's signature and representation rules, the USPTO will require USPTO.gov account holders to verify their identity in order to file electronic trademark forms.

## **I. USPTO.gov login system**

In 2019, as part of the USPTO's register protection initiatives, the USPTO established a three-phase login system intended to increase the accountability of those filing submissions. Phase 1, implemented in 2019, requires a user to create a USPTO.gov account in order to file electronic trademark forms. Once the account is created, the holder is subject to the terms of use. Account holders who violate the terms of use may have their accounts blocked to prevent continued abuse of the USPTO's electronic trademark systems. On January 8, 2022, the USPTO began implementing Phase 2 by making ID verification available on a voluntary basis to existing USPTO.gov account holders. On August 6, 2022, the USPTO will make it mandatory for existing and new account holders who occupy an appropriate user role to verify their identity as a condition for filing electronic trademark forms. At that time, existing unverified USPTO.gov accounts will remain active, but will not be able to be used to access or submit trademark forms. Only verified account holders will be able to access and submit trademark forms. Phase 3 restricts access to electronic trademark records to only those authorized to make submissions related to those specific records. This will prevent unauthorized actors from filing submissions in application and registration records.

## **II. Phase 1 account login**

When a user creates a USPTO.gov account, the USPTO can monitor filing behaviors and link improper submissions to a particular account, which it can then block. Currently, however, there is nothing to prevent a blocked account holder from using false information to create a new account in order to file trademark submissions. The USPTO must then investigate and pursue sanctions once it discovers that the blocked account holder has created a new account. There is also nothing to prevent someone who is engaging in the unauthorized practice of law and unauthorized representation of others before the USPTO from filing submissions that are contrary to the USPTO rules of practice, including rules on signatures, certifications, and representation of others before the USPTO. Again, the USPTO can only address rule violations

after they are investigated and undergo an administrative sanctions process. These are resource-intensive. Lastly, there is nothing to prevent account holders from sharing accounts, which is a violation of the terms of use, unless or until the USPTO investigates and imposes sanctions.

Phase 2 ID verification is designed to help address these three gaps.

### **III. Phase 2 ID verification and Phase 3 role-based access controls**

ID verification ensures that those making submissions to the USPTO to obtain or maintain a trademark registration are who they say they are and can be held accountable for misconduct, fraud, and/or abuse of the USPTO's systems. This will allow the USPTO to take down USPTO.gov accounts registered to bad actors and prevent them from creating new accounts or sharing accounts. Phase 2 of the USPTO's ID verification process also requires USPTO.gov account holders to identify their user role when verifying their identity. These user roles set the stage for the future implementation of Phase 3's role-based access controls. Phase 3 will enable the USPTO to limit submissions on a particular application or registration to a specific USPTO.gov account holder with the appropriate user role.

There are four authorized user roles: (1) trademark owner<sup>1</sup>, (2) U.S.-licensed attorney, (3) Canadian attorney or agent, and (4) sponsored attorney support staff. Under role-based access controls, owner accounts would have submission rights only for their own applications or registrations. For that reason, an owner account can only be established by the owner or by its authorized employees. Each employee who is authorized to file submissions on behalf of the owner may have a separate owner account. However, the owner account is limited to submissions related to the owner's applications and registrations. Only an attorney account or a sponsored staff account can be used to file submissions in multiple applications and registrations. An attorney account would have submission rights for only those applications or registrations in

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<sup>1</sup> A represented owner does not need a verified account because the owner's attorney will have a verified account and because the owner can electronically sign forms without verifying an account. If an owner becomes unrepresented after recognition of their attorney ends, by revocation or withdrawal, for example, an owner will have to establish and verify their own account in order to file an electronic form without representation.

which the attorney is designated as an attorney of record. An attorney-sponsored support staff account would be similarly limited to applications or registrations in which a supervising attorney who sponsors the support staff account has access rights. Support staff who work with several attorneys must be sponsored by each attorney in order to have access rights to each attorney's applications or registrations. A reciprocally recognized Canadian trademark attorney or agent may prepare, sign, and file a new application and prepare and sign other application- and registration-related submissions on behalf of clients located in Canada, although a qualified U.S. attorney must file such submissions. ID verification, user roles, and access controls based on those user roles will provide more security for the trademark registration system, help prevent fraud in the system, and greatly aid in removing improper filings once discovered.

#### **IV. User roles limited to owners and attorneys**

Section 1 of the Lanham Act provides that "the owner of a trademark used in commerce may request registration of its trademark." Under USPTO rules, owners who are not represented by an attorney are authorized to file and make submissions regarding their trademarks. Also, USPTO rules allow submissions from attorneys who are authorized by the owner to represent them. Attorneys are subject to professional responsibility rules, ethical sanctions, potential malpractice remedies, and the loss of a law license for misrepresentation. These penalties are designed to ensure that the attorney representing the owner is acting on behalf of the owner.

Through investigations of suspicious filings, the USPTO has discovered that tens of thousands of trademark submissions have been made by actors who purport to act on behalf of the owner but are not adhering to USPTO rules that govern signatures, certifications, and representation of others before the USPTO. These rule violations jeopardize the validity of the submissions made as well as any resulting registration. The USPTO does not have assurances that these actors, typically non-attorney entities (i.e., those engaging in unauthorized practice of law or unauthorized representation of others before the USPTO), are acting on behalf of the owner and with the owner's knowledge of the information contained in the submissions.

Limiting access to electronic trademark forms through ID verification and user roles to only those whose submissions in trademark matters can be deemed an act of the owner will provide assurances to the USPTO and the public that filings are authorized by the owner, are made at their request, and are made with specific knowledge of the information contained in the submission.

## **V. No user roles for non-attorney entities**

Under USPTO rules, non-attorney entities are not authorized to practice law or represent owners before the USPTO, and thus, there is no corresponding user role. A non-attorney entity such as a trademark preparation and/or filing company is one that: (1) does not have an attorney directly supervising the staff's interactions with clients or the USPTO, and (2) provides only law-related services to clients (e.g., offers trademark information, not advice; acts as a mere scrivener when assisting in the preparation of trademark documents; or conducts trademark searches but does not offer opinions on the registrability of a mark). When these entities provide legal advice, prepare trademark applications, or file submissions on behalf of others, they are likely engaging in unauthorized practice of law and unauthorized representation of others before the USPTO. Practice of law before the Office in trademark matters is described in 37 CFR 11.5(b)(2).

The USPTO has the authority to regulate the conduct of proceedings before the Office and the conduct of those who appear before the Office in proceedings, including practitioners and non-practitioners. *See* 5 U.S.C. 500(d)(2) (Federal agencies may sanction those “individuals who appear in a representative capacity before the agency”); 35 U.S.C. 2(b)(2)(A) (the USPTO has the authority to establish regulations that “shall govern the conduct of proceedings in the Office”); and 35 U.S.C. 3(b)(2)(A) (the Commissioner for Trademarks has the authority to manage and direct all aspects of trademark operations).

Some customers appear to rely on non-attorney entities for legal advice without realizing that the non-attorney entity cannot represent trademark applicants before the USPTO or that the

entity's behavior could undermine the validity of their application or registration. Furthermore, these non-attorney entities are also routinely providing signatures on trademark submissions that violate the USPTO's rules. Under these rules, submissions must be personally signed, and therefore, signatures are non-delegable. 37 CFR 2.193(a), 11.18; Trademark Manual of Examining Procedure § 611.01(c). Authorizing someone who is not the signatory to sign a trademark submission jeopardizes the validity of the submission and may affect the validity of the entire application or registration.

The USPTO has imposed sanctions and terminated pending applications that contain violations of USPTO rules, without regard to whether the applicant was aware of the rule violations perpetrated by those making submissions on their behalf. These trademark applicants have been misled and defrauded by actors filing submissions at the USPTO, purportedly on their behalf but clearly against the owner's interest and, in most cases, without the owner's knowledge. To discourage reliance on non-attorney entities and to adhere to the Lanham Act and the USPTO rules more closely, the USPTO is limiting user roles through the ID verification process for a USPTO.gov account to those authorized under USPTO rules to make trademark submissions filings for the owner (i.e., the owner and the owner's representative authorized to practice law before the USPTO in trademark matters).

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